

July 1, 2005

Ex Parte

Marlene H. Dortch  
 Secretary  
 Federal Communications Commission  
 445 12th Street, S.W.  
 Washington, DC 20554

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Federal Communications Commission  
Office of Secretary

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Re: Applications for Consent to Transfer of Control Filed by Verizon  
 Communications Inc. and MCI, Inc., WC Docket No. 05-75 - REDACTED

Dear Ms. Dortch:

We write in response to Global Crossing's June 2, 2005 ex parte,<sup>1</sup> in which it repeats claims it has raised before in opposition to the proposed combination of Verizon and MCI. As we have shown before, there is no merit to Global Crossing's claims. In particular, Verizon and MCI have demonstrated that the combination of their highly complementary operations would have significant benefits for large enterprise and other commercial and institutional customers by creating a strong new competitor with the network reach and financial resources to compete in this market segment nationwide. In addition, there is extensive competition for all different types and sizes of such customers, and for various services they purchase. There are large numbers of providers competing for these customers today, none of which has a dominant share, including traditional interexchange carriers such as AT&T, Sprint, and Qwest; CLECs like XO and Level 3; cable companies such as Time Warner and Cablevision; systems integrators and managed service providers like IBM, EDS, Accenture, Northrop Grumman, and Lockheed Martin; major global telecommunications providers such as Equant, British Telecom, Deutsche Telekom, COLT, KPN Telecom, and NTT; equipment vendors like Lucent and Nortel; and, most recently, major application providers such as Microsoft. The combined company will be just one among many other competitors in this segment of the industry, which is widely recognized as the most competitive. Nothing in Global Crossing's most recent filing calls any of this into question.<sup>2</sup>

First, Global Crossing claims that half of its "total access spend in the United States" is paid to SBC, Verizon, AT&T, and MCI. June 2, 2005 Global Crossing Ex Parte at 7. But Global Crossing has lumped the four carriers together for an obvious reason — its own data show that MCI accounts for less than [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of the amount it pays to all four carriers. See *id.* Moreover, [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] is far and away the largest of the four

<sup>1</sup> Ex Parte Letter from Teresa D. Baer, Latham & Watkins LLP, to Marlene H. Dortch, FCC, WC Docket Nos. 05-65 & 05-75 (FCC filed June 2, 2005) ("June 2, 2005 Global Crossing Ex Parte").

<sup>2</sup> Global Crossing also raises claims with respect to switched access charges and Internet backbones, which are equally without merit, and which are discussed below.

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recipients of Global Crossing's "access spend," with Verizon and MCI combined receiving well under [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] the amount Global Crossing pays to this one carrier. *See id.* Thus, these data in no way suggest that the combination of Verizon and MCI will reduce competition in the market as a whole, or even that it will have a material effect on Global Crossing.

Second, Global Crossing claims that "[n]o other CLEC serves as many buildings as either AT&T or MCI." *Id.* at 8. Again, however, Global Crossing lumps MCI with AT&T for a reason that is readily apparent. Although Global Crossing does not identify the source of its data, but taking the submission at face value, the data show that, nationwide, AT&T has more than [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] as many on-net buildings as MCI. *See id.* Focusing on only the lit buildings that are possibly relevant here — those MCI lit-buildings within Verizon's region — [BEGIN CONFIDENTIAL] [END CONFIDENTIAL]<sup>3</sup> has by far the highest number of lit-buildings in Verizon's region — more than [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] as many as MCI. *See id.* at 9. Moreover, even using the limited data on which Global Crossing relies, MCI does not even have the next highest number of lit buildings in Verizon's region, instead it is [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] that does. *See id.* This, of course, ignores all of the other competing carriers that have deployed fiber to buildings in Verizon's region.

Third, Global Crossing asserts [BEGIN CONFIDENTIAL]

[END CONFIDENTIAL]<sup>4</sup> *See id.* As an initial matter, Global Crossing provides no back-up data or other information to support these assertions. In any event, even the limited data available to MCI, from those CLECs with which MCI has agreements to purchase dedicated access services, show that Global Crossing significantly overstates the instances in which Verizon and MCI are the only carriers to have deployed fiber to a particular building. *See Powell et al. Reply Decl.* ¶¶ 5, 19-20. In addition, at least 80 percent of MCI's on-net buildings are either in wire centers that meet the "triggers" that the FCC established for de-listing unbundled DS3 loops, or have sufficient demand to justify the use of OC-n circuits, which are not available as unbundled network elements. *See id.* ¶ 31; *see also id.* ¶ 22 (80 percent of MCI's on-net buildings are concentrated in only 111 Verizon wire centers that have an average of 10 competitive fiber provider networks and all but 10 of which have three or more competitive fiber providers). With respect to the Verizon wire centers where MCI has deployed its fiber networks, Global Crossing's data is again vastly overstated. In fact, there is at least one additional competitor in 89 percent of those wire centers (and in 96 percent of the wire centers where MCI has established fiber-based collocation); an average of nearly six competitors per wire center; and in some cases as many as 20 competitors. *See Public Interest Statement* at 32;

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<sup>3</sup> [BEGIN CONFIDENTIAL]

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<sup>4</sup> [BEGIN CONFIDENTIAL]

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Lew/Lataille Decl. ¶ 23. And 74 percent of the wire centers in which MCI's local network has a fiber-based collocation are Tier 1 or Tier 2 central offices under the Commission's transport impairment tests. *See* Powell et al. Reply Decl. ¶ 25. All of this demonstrates that other carriers are either already competing extensively or could compete in those areas in Verizon's region where MCI has deployed its fiber networks.

Fourth, Global Crossing asserts that self-deployment of fiber to serve particular customers is "cost-prohibitive," claiming that it costs "[a]t least \$250,000 to build to a customer location." June 2, 2005 Global Crossing Ex Parte at 10. Global Crossing provides no supporting details for this assertion, which flies in the face of the Commission's findings with respect to the ability of carriers to self-deploy loops at the OCn and near-OCn level generally, and at the DS3 and DS1 level in particular wire centers. Indeed, as noted above, the overwhelming majority of MCI's local fiber is deployed at capacities or in wire centers where the Commission has held that CLECs are not impaired and can compete using their own facilities. The Commission has also previously recognized that other carriers' claims that self-deployment is cost-prohibitive were overstated. *See TRRO* ¶¶ 76, 150 n.419; *see generally* Verizon's Pilgrim Reply Decl., WC Docket No. 04-313, CC Docket No. 01-338 (FCC filed Oct. 19, 2004) (explaining the numerous flaws in CLEC calculations of the cost of self-deployment). In any event, Global Crossing's claim of "[a]t least \$250,000" cannot be squared with other carriers' claims that the cost can be as low as \$10,000 or is, on average, \$200,000. *TRO* ¶ 205 n.644; *TRRO* ¶ 150 n.418.

Fifth, Global Crossing makes a number of claims regarding Verizon's special access tariffs and prices. *See* June 2, 2005 Global Crossing Ex Parte at 12, 14, 16-17. All of these arguments are already being addressed by the Commission in other, industry-wide rulemaking proceedings and in any event are wrong on the merits. As the Commission has held, it is "more appropriate[]" to address concerns regarding special access in "our existing rulemaking proceedings on special access performance metrics and special access pricing" so that the Commission may "develop a comprehensive approach based on a full record that . . . treats similarly-situated incumbent LECs in the same manner."<sup>5</sup> In addition, Global Crossing fails to demonstrate any transaction-specific issues related to special access rates, terms, and conditions. Indeed, the Commission has recognized that the only relevant issue in the context of a merger proceeding is whether the transaction somehow creates materially greater risk of discrimination in those rates, terms, and conditions.<sup>6</sup> For these same reasons, Global Crossing's proposal of reimposing price cap regulation, and reinitializing the price caps, on the combined entity's special access services — in addition to being without merit — is only properly considered in those other, industry-wide dockets, not in the context of this individual transaction.

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<sup>5</sup> Memorandum Opinion and Order, *Applications of AT&T Wireless Services, Inc. and Cingular Wireless Corp. for Consent To Transfer Control*, 19 FCC Rcd 21522, ¶ 183 (2004); *see* Joint Opposition to Petitions to Deny and Reply to Comments at 41 (citing decisions); Public Interest Statement at 33 n.33 (same).

<sup>6</sup> *See* Memorandum Opinion and Order, *Applications of Pacific Telesis Group and SBC Communications, Inc. for Consent To Transfer Control*, 12 FCC Rcd 2624, ¶ 54 (1997) ("*SBC/PacTel Order*") (recognizing that the "pertinent issue" is "the incremental increase in the scope of the price squeeze that the proposed transfer will make possible"); Memorandum Opinion and Order, *Qwest Communications International Inc. and US WEST Inc., Applications for Transfer of Control*, 15 FCC Rcd 5376, ¶ 42 (2000).

a. Global Crossing first complains about Verizon's special access discounts. *See* June 2, 2005 Global Crossing Ex Parte at 12. Global Crossing's claims betray a fundamental misunderstanding of Verizon's tariffs. As Verizon has explained previously, the overwhelming majority of Verizon's discount plans are *term* and not *volume* based, so that the same significant discounts are available on an order of a single DS1 or 1000 DS1s.<sup>7</sup> Indeed, fewer than a handful of Verizon's several dozen special access plans oblige a customer to commit to maintain a minimum percentage of its pre-existing special access expenditures with Verizon in order to receive a discount, and most of these plans provide no greater discount than is available under plans that do not contain such a requirement. Nor is there any merit to Global Crossing's claim (at 13) that "substantial financial penalties" apply if a carrier that selects a volume discount plan does not meet the terms of the tariff. In fact, Verizon has explained that the shortfall assessment on these plans — which can run for as little as one year — is simply the difference between the amount Verizon would have received had the carrier met the minimum volume level for the service in question and the amount Verizon actually received. *See* Lew Reply Decl. ¶¶ 56-57. Verizon has further explained that the assessment is determined based on the *average* number of circuits in service over the six-month period, so a carrier could fall below the minimum during a six-month period without a shortfall assessment. *See id.*

b. Global Crossing (at 14, 16) next presents a charts that purport to show that Verizon's special access rates are higher where Verizon has received pricing flexibility than where it is still subject to price cap regulation, and in both cases higher than rates available from AT&T and MCI. Global Crossing provides no back-up detail for these charts, so the Commission could place no weight on its claims in any event. For example, although the rates for AT&T are presented as though they apply state-wide, there is no indication that Global Crossing is presenting anything more than the rate AT&T offered for a particular circuit in a particular location. In addition, Global Crossing in two of its three charges is using Verizon's tariffed rate, ignoring the discounts of 35 to 40 percent off those rates that Verizon has explained that virtually all carriers that purchase special access from Verizon benefit from. And Global Crossing's example is hardly representative of what carriers actually purchase in the market. The overwhelming majority of carriers that purchase special access to transport traffic within their network or to connect to a customer do not purchase a 10- or 30-mile long DS1 circuit (with two DS1 channel terminations and DS1 transport). Instead, these carriers obtain much lower rates by purchasing transport and one of the channel terminations at DS3 or higher levels, and multiplex the DS1 channel terminations on the end-user side up to the higher capacity.

For all of these reasons, the comparisons made by Global Crossing are meaningless. Indeed, what Global Crossing does not acknowledge is that Verizon has previously stated that, through pricing flexibility and other discounts, its average revenue per special access line has fallen, and at a far faster rate than would have otherwise been required by price cap regulation.<sup>8</sup> Verizon has shown that its average revenue per special access line has decreased by an average of 15.2 percent per year since 2001. And Verizon has shown that average revenue per special access line for DS1 and DS3 circuits experienced significant declines as well, averaging annual reductions of 4.2 and 6.1 percent per year respectively between 2002 and 2004.

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<sup>7</sup> *See* Joint Opposition to Petitions to Deny and Reply to Comments at 39; Lew Reply Decl. ¶¶ 55-59.

<sup>8</sup> *See* Lew Reply Decl. ¶ 37

c. Finally, Global Crossing (at 17) presents a comparison of “long-haul and short-haul pricing.” Global Crossing again provides no explanation of how it calculated its figures, this time presenting a single figure for all Verizon price cap and pricing flexibility regions, ignoring that Verizon has numerous tariff filing entities, which operate in more than 25 jurisdictions. *See* Lew Reply Decl. ¶ 39 & n.9. Nor does Global Crossing explain how or why it has converted DS1 and DS3 rates (again, for a 10-mile circuit) into DS0 equivalents. Presumably, it is because it knows that, in comparing short-haul and long-haul prices, it is comparing apples and oranges, as long-haul circuits cost far less on a per mile and “per DS0” basis to deploy than short-haul circuits. Any difference in prices for long-haul and short-haul transport, therefore, has nothing to do with the questions that are actually before this Commission in its review of this transaction.

For these reasons, Global Crossing has not come close to undermining the showing by Verizon and MCI, “by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest, considering both its competitive effects and other public interest benefits and harms.”<sup>9</sup> Therefore, the Commission has no authority to impose on this transaction the conditions Global Crossing proposes.<sup>10</sup> Nonetheless, we note that Global Crossing recognizes (at 23) that conditions that others have proposed — such as requiring divestitures of customers or facilities — would raise insurmountable practical difficulties and should not be adopted.

\* \* \*

Finally, at the end of its recent *ex parte*, under the heading “Additional Issues,” Global Crossing raises claims with respect to switched access charges and Internet backbones. Neither has merit.

First, Global Crossing (at 25) notes Verizon’s position that switched access charges apply to long-distance and toll calls from VoIP customers to PSTN customers and asserts that Verizon does not impute such charges into its own retail VoIP offering. Claims about Verizon’s retail VoIP offering are entirely unrelated to this transaction, and the question whether the Commission’s current rules require the imposition of access charges should be addressed in a proceeding focused on that subject, not in the context of this bilateral transaction.

Second, Global Crossing’s alarmist rhetoric (at 26) that Verizon/MCI, along with SBC/AT&T, “will control ingress and egress to the Internet as well as the largest Internet backbone networks” is baseless. As Verizon and MCI have demonstrated, they will carry less than 10 percent of North American Internet traffic and rank fourth in traffic share among seven larger or comparable providers, and operators other than those seven would carry approximately

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<sup>9</sup> Memorandum Opinion and Order, *Application of WorldCom, Inc. and MCI Communications Corp. for Transfer of Control*, 13 FCC Rcd 18025, ¶ 10 (1998).

<sup>10</sup> *See, e.g., id.*

35 percent of Internet traffic.<sup>11</sup> As a result, the combined company will not have near the market share to “increase the costs” of other backbone providers, as Global Crossing asserts.

Likewise, Verizon/MCI will not in any way “control ingress and egress to the Internet” by end users. Cable modem, not DSL, is the market leader for broadband services, accounting for more than 61 percent of residential and small business customers receiving download speeds of 200 Kbps and 83 percent of customers that receive more than 200 Kbps in both directions. *See* Hassett et al. Reply Decl. ¶ 38. Moreover, new technologies offer the promise, and increasingly the reality, of alternative forms of broadband, including Wi-Fi, WiMax, satellite technologies, 3G wireless, fiber-to-the-home, and broadband over power lines. *See id.* ¶¶ 39-40. The result is that approximately 90 percent of *all* U.S. households now have access to broadband service from a provider *other* than their local telephone company. *See* Hassett et al. Decl. ¶ 58. The Commission already has rejected claims that “BOCs either are not subject to competition with respect to their broadband offerings, or are constrained only by a duopolistic relationship with cable operators. . . . broadband technologies are developing and we expect intermodal competition to become increasingly robust, including providers using platforms such as satellite, power lines, and fixed and mobile wireless in addition to the cable providers and BOCs.” *Section 271 Forbearance Order* ¶ 29.

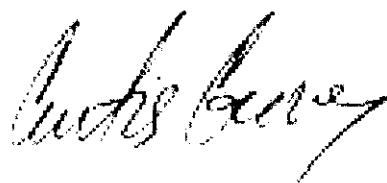
In sum, as with its claims about enterprise customers, these additional claims do nothing to undermine Verizon’s and MCI’s showing that this transaction is in public interest.

Please let us know if you require any additional information.

Sincerely,



Dee May  
Verizon



Curtis Groves  
MCI

cc: Julie Veach  
William Dever  
Ian Dillner  
Gail Cohen  
Michelle Carey  
Tom Navin  
Don Stockdale

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<sup>11</sup> *See* Joint Opposition to Petitions to Deny and Reply to Comments at 70-80; Kende Reply Decl. ¶ 8; Public Interest Statement at 61-66; Kende Decl. ¶¶ 2-8.

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